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REMARKS

1. Applicant thanks the Examiner for the Examiner's comments, which have greatly assisted Applicant in responding.

Applicant thanks the Examiner for his courtesy and assistance during an interview which was held on 29 November 2006. During the interview, Applicant discussed the term, eligible, and that the Examiner interprets eligible to mean "can't scan." Per the Examiner's suggestion, Applicant has amended the claims to clarify that the word, eligible, is not determining whether something is wrong with the check. Specifically, the Claims have been amended to show that the scanning step is either successful or unsuccessful and, if successful, the step to determine if it is eligible is performed after. Support can be found in the Specification at least on page 7, last paragraph, reproduced hereinbelow (emphasis added):

> **POS.** Ten billion to 20 billion checks are written at point of sale annually. In a preferred embodiment of the invention, in the POS application, conversion logic is applied when a check is presented for payment. **At the retail location, the cashier scans the check <u>then</u> calls for authorization.** The check truncation decision processing logic resides on equipment at a centralized location rather than in the retail store. **The cashier receives confirmation that the item <u>can be converted</u> to an ACH debit or, if it cannot, it must be deposited.**

Applicant also discussed the manner in which Applicant planned to submit a Declaration 1.131. Per the Examiner's suggestion, Applicant cited within the Declaration the relevant parts from the MPEP, hereinbelow.

Applicant has taken every effort to represent the Examiner's statements fairly and accurately.

2. **35 U.S.C. §112**

The Examiner rejected Claim 1 under 35 USC §112, second paragraph for not particularly pointing out and distinctly claiming the subject matter which Applicant regards as her invention. Specifically, the Examiner asserted that the phrase, such as, renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

Applicant has amended the Claim 1 by removing the phrase, such as, and by adding clarifying language (means for providing notice) to distinctly claim subject matter which Applicant regards as her invention. The amendment to Claim 1 is deemed to overcome the rejection. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection under 35 USC §112, second paragraph.

Applicant has similarly amended the other independent Claims which also used the phrase, such as.

3. **35 U.S.C. §103**

Claims 1-56 stand rejected under 35 U.S.C.§103(a) as being unpatentable over Funk and Downs, in view of Phillips *et al* (U.S. 2005/0091132 A1.)

Applicant respectfully traverses and Applicant incorporates the comments from Applicant's previous responses herein.

Each of the rejections to the independent Claims relied on the Phillips reference. The Phillips reference has a prior art date under 35 U.S.C. 102(e) prior to Applicant's effective filing date. Accordingly, the rejection of Claims 1-56 under 35 U.S.C. §103(a) is deemed moot in view of the declaration by the inventor, Laura Lee Orcutt, under 37 C.F.R. 1.131 that Applicant has attached, swearing behind Phillips.

To support Applicant's evidence of facts establishing diligence, the Examiner's attention is directed to MPEP 2138.06, Reasonable Diligence, DILIGENCE REQUIRED IN PREPARING AND FILING PATENT APPLICATION (emphasis added):

> **The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor**. Conception was established at least as early as the date a draft of a patent application was finished by a patent attorney on behalf of the inventor. Conception is less a matter of signature than it is one of disclosure. Attorney does not prepare a patent application on behalf of particular named persons, but on behalf of the true inventive entity. Six days to execute and file application is acceptable. *Haskell v. Colebume*, 671 F.2d 1362, 213 USPQ 192, 195 (CCPA 1982). See also *Bey v. Kollonitsch*, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986) (**Reasonable diligence is all that is required of the attorney. Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. <u>If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient</u>.** Work on a related case(s) that contributed substantially to the ultimate preparation of an application can be credited as diligence.).

Accordingly, Claims 1-56 are deemed to be in allowable condition. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. §103(a).

4. It should be appreciated that Applicant has elected to amend the Claims solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such amendment, Applicant has not and does not in any way narrow the scope of protection to which Applicant considers the invention herein to be entitled. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

CONCLUSION

Based on the foregoing, Applicant considers the present invention to be distinguished from the art of record. Accordingly, Applicant earnestly solicits the Examiner's withdrawal of the rejections raised in the above referenced Office Action, such that a Notice of Allowance is forwarded to Applicant, and the present application is therefore allowed to issue as a United States patent. The Examiner is invited to call (650) 474-8400 to discuss the response.

Respectfully Submitted,

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